

jurisdiction over the state in which the registrant's principal place of business is located.

(2) All filings or other notices filed pursuant to this section which need not be certified in accordance with § 1.16 may be submitted to the Commission in electronic form using a form of user authentication assigned in accordance with procedures established by or approved by the Commission, and otherwise in accordance with instructions issued by or approved by the Commission, if the retail foreign exchange dealer or a designated self-regulatory organization has provided the Commission with the means necessary to read and to process the information contained in such report. Any such electronic submission must clearly indicate the registrant or applicant on whose behalf such filing is made and the use of such user authentication in submitting such filing will constitute and become a substitute for the manual signature of the authorized signer. In the case of a Form 1-FR filed via electronic transmission in accordance with procedures established by or approved by the Commission, such transmission must be accompanied by the user authentication assigned to the authorized signer under such procedures, and the use of such user authentication will constitute and become a substitute for the manual signature of the authorized signer for the purpose of making the oath or affirmation referred to in paragraph (e)(4) of this section.

§ 5.13 Reporting to customers of retail foreign exchange dealers and futures commission merchants; monthly and confirmation statements.

(a) *Monthly statements.* Each retail foreign exchange dealer or futures commission merchant must promptly furnish in writing to each retail forex customer, as of the close of the last business day of each month or as of any regular monthly date selected, except for accounts in which there are neither open positions at the end of the statement period nor any changes to the account balance since the prior statement period, but in any event not less frequently than once every three months, a statement which clearly shows:

- (1) For each retail forex customer:
 - (i) The open retail forex transactions with prices at which acquired;
 - (ii) The net unrealized profits or losses in all open retail forex transactions marked to the market; and
 - (iii) Any money, securities or other property carried with the retail foreign exchange dealer or futures commission merchant; and
 - (iv) A detailed accounting of all financial charges and credits to such retail forex accounts during the monthly reporting period, including money, securities or property received from or disbursed to such customer and realized profits and losses; and
- (2) For each retail forex customer engaging in forex options transactions:
 - (i) All forex options purchased, sold, exercised, or expired during the monthly reporting period, identified by underlying retail forex transaction or underlying currency, strike price, transaction date, and expiration date;
 - (ii) The open forex option positions carried for such customer as of the end of the monthly reporting period, identified by underlying retail forex transaction or underlying currency, strike price, transaction date, and expiration date;
 - (iii) All open forex option positions marked to the market and the amount each position is in the money, if any;
 - (iv) Any money, securities or other property carried with the retail foreign exchange dealer or futures commission merchant; and

(v) A detailed accounting of all financial charges and credits to such retail forex account(s) during the monthly reporting period, including money, securities and property received from or disbursed to such customer, premiums charged and received, and realized profits and losses.

(b) *Confirmation statement.* Each retail foreign exchange dealer or futures commission merchant must, not later than the next business day after any retail forex or forex option transaction, furnish:

- (1) To each retail forex customer, a written confirmation of each retail forex transaction caused to be executed by it for the customer, including offsetting transactions executed during the same business day and the rollover of

an open retail forex transaction to the next business day.

(2) To each retail forex customer engaging in forex option transactions, a written confirmation of each forex option transaction, containing at least the following information:

- (i) The retail forex customer's account identification number;
- (ii) A separate listing of the actual amount of the premium, as well as each mark-up thereon, if applicable, and all other commissions, costs, fees and other charges incurred in connection with the forex option transaction;
- (iii) The strike price;
- (iv) The underlying retail forex transaction or underlying currency;
- (v) The final exercise date of the forex option purchased or sold; and
- (vi) The date the forex option transaction was executed.

(3) To each retail forex customer engaging in forex option transactions, upon the expiration or exercise of any forex option, a written confirmation statement thereof, which statement shall include the date of such occurrence, a description of the forex option involved, and, in the case of exercise, the details of the retail forex or physical currency position which resulted therefrom including, if applicable, the final trading date of the retail forex transaction underlying the option.

(4) Notwithstanding the provisions of paragraphs (b)(1) through (3) of this section, a retail forex transaction or forex option transaction that is caused to be executed for a pooled investment vehicle that engages in retail forex transactions need be confirmed only to the operator of such pooled investment vehicle.

(c) *Controlled accounts.* With respect to any account controlled by any person other than the retail forex customer or forex option customer for whom such account is carried, each retail foreign exchange dealer or futures commission merchant shall promptly furnish in writing to such other person the information required by paragraphs (a) and (b) of this section.

(d) *Recordkeeping.* Each retail foreign exchange dealer or futures commission merchant shall retain, in accordance with § 1.31 of this chapter, a copy of

each monthly statement and confirmation required by this section.

(e) *Introduced accounts.* Each statement provided pursuant to the provisions of this section must, if applicable, show that the account for which the retail foreign exchange dealer or futures commission merchant is providing the statement was introduced by an introducing broker and the names of the retail foreign exchange dealer or futures commission merchant and introducing broker.

(f) *Electronic transmission of statements.* (1) The statements required by this section may be furnished to a retail forex customer by means of electronic media if the retail forex customer so consents, *Provided, however*, that a retail foreign exchange dealer or futures commission merchant must, prior to the transmission of any statement by means of electronic media, disclose the electronic medium or source through which statements will be delivered, the duration, whether indefinite or not, of the period during which consent will be effective, any charges for such service, the information that will be delivered by such means, and that consent to electronic delivery may be revoked at any time, and provided, further, that a retail foreign exchange dealer or futures commission merchant must obtain the retail forex customer's signed consent acknowledging such disclosure prior to the transmission of any statement by means of electronic media.

(2) Any statement required to be furnished to a person other than a retail forex customer in accordance with paragraph (f) of this section may be furnished by electronic media.

(3) A retail foreign exchange dealer or futures commission merchant who furnishes statements to a retail forex customer by means of electronic media must retain a daily confirmation statement for such retail forex customer as of the end of the trading session, reflecting all transactions made during that session for the customer, in accordance with § 1.31 of this chapter.

(g) *Combination with other statements.* Any futures commission merchant required to deliver statements to retail forex customers in accordance with § 1.33 of this chapter may combine into

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one monthly statement or confirmation statement, as the case may be, the information required by this section and the information required by § 1.33, provided that retail forex account information is separately identified from any other trading or account activity of the retail forex customer.

§ 5.14 Records to be kept by retail foreign exchange dealers and futures commission merchants.

(a) No person shall be registered as a retail foreign exchange dealer under the Act unless, commencing on the date his application for such registration is filed, he prepares and keeps current ledgers or other similar records which show or summarize, with appropriate references to supporting documents, each transaction affecting his asset, liability, income, expense and capital accounts, and in which (except as otherwise permitted in writing by the Commission) all his asset, liability and capital accounts are classified into either the account classification subdivisions specified on Form 1-FR-FCM or categories that are in accord with generally accepted accounting principles as applicable. Each person so registered shall prepare and keep current such records.

(b) Each applicant or registrant must make and keep as a record in accordance with § 1.31 of this chapter formal computations of its adjusted net capital and of its minimum financial requirements pursuant to § 1.17 or § 5.7 of this chapter, or the requirements of the designated self-regulatory organization to which it is subject, as applicable, as of the close of business each month. Such computations must be completed and made available for inspection by any representative of the National Futures Association, in the case of an applicant, or of the Commission or designated self-regulatory organization, if any, in the case of a registrant, within 17 business days after the date for which the computations are made, commencing the first month end after the date the application for registration is filed.

§ 5.15 Unlawful representations.

It shall be unlawful for any person registered pursuant to the require-

ments of this part to represent or imply in any manner whatsoever that such person has been sponsored, recommended or approved, or that its abilities or qualifications have been reviewed or evaluated, by the Commission, the Federal government or any agency thereof.

§ 5.16 Prohibition of guarantees against loss.

(a) No retail foreign exchange dealer, futures commission merchant or introducing broker may in any way represent that it will, with respect to any retail foreign exchange transaction in any account carried by a retail foreign exchange dealer or futures commission merchant for or on behalf of any person:

(1) Guarantee such person against loss;

(2) Limit the loss of such person; or

(3) Not call for or attempt to collect security deposits, margin, or other deposits as established for retail forex customers.

(b) No person may in any way represent that a retail foreign exchange dealer, futures commission merchant or introducing broker will engage in any of the acts or practices described in paragraph (a) of this section.

(c) This section shall not be construed to prevent a retail foreign exchange dealer, futures commission merchant or introducing broker from assuming or sharing in the losses resulting from an error or mishandling of an order.

(d) This section shall not affect any guarantee entered into prior to October 18, 2010, but this section shall apply to any extension, modification or renewal thereof entered into after such date.

§ 5.17 Authorization to trade.

No retail foreign exchange dealer, futures commission merchant, introducing broker or any of their associated persons may directly or indirectly effect a retail forex transaction for the account of any customer unless before the transaction the customer, or person designated by the customer to control the account specifically authorized